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Attorney for Plaintiff  
JO ANNE GRAFF

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JO ANNE GRAFF,

Plaintiff,

v.

HUNT & HENRIQUES, a general partnership,  
MICHAEL SCOTT HUNT, individually and  
in his official capacity, and JANALIE ANN  
HENRIQUES, individually and in her official  
capacity,,

Defendants.

Case No. C08-00908-JF-PVT

**MOTION FOR PARTIAL SUMMARY  
JUDGMENT AGAINST DEFENDANT,  
HUNT & HENRIQUES**

Date: August 15, 2008  
Time: 9:00 a.m.  
Judge: Honorable Jeremy Fogel  
Courtroom: Courtroom 3, 5th Floor  
Place: 280 South First Street  
San Jose, California

COMES NOW the Plaintiff, JO ANNE GRAFF, by and through her attorney Fred W. Schwinn of the Consumer Law Center, Inc., and pursuant to Fed. R. Civ. P. 56 and Civil L.R. 7-2, hereby moves this Court for an Order: 1) declaring that the collection activities of Defendant, HUNT & HENRIQUES, violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(a)(2); 2) awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); 3) awarding Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3); and 4) awarding Plaintiff such other and further relief as may be just and proper.. In support of her Motion, Plaintiff states as follows:

1. No material issues of fact are in dispute concerning Defendants' liability, therefore, Plaintiff is entitled to summary judgment as a matter of law.

2. Plaintiff further refers the Court to her Memorandum of Points and

1 Authorities in Support filed simultaneously herewith.  
2

3 CONSUMER LAW CENTER, INC.  
4

5 By: /s/ Fred W. Schwinn  
6 Fred W. Schwinn, Esq.  
7 Attorney for Plaintiff  
8 JO ANNE GRAFF  
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his official capacity, and JANALIE ANN  
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capacity,

Defendants.

Case No. C08-00908-JF-PVT

**NOTICE OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AGAINST DEFENDANT, HUNT &  
HENRIQUES**

Date: August 15, 2008  
Time: 9:00 a.m.  
Judge: Honorable Jeremy Fogel  
Courtroom: Courtroom 3, 5th Floor  
Place: 280 South First Street  
San Jose, California

TO: ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 15, 2008, at 9:00 a.m., or as soon thereafter as this matter may be heard, in Courtroom 3 of the United States District Court located at 280 South First Street, San Jose, California, before the Honorable Jeremy Fogel, United States District Judge, Plaintiff, JO ANNE GRAFF ("Movant"), will move the Court for an Order: 1) declaring that the collection activities of Defendant, HUNT & HENRIQUES, violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(a)(2); 2) awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); 3) awarding Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3); and 4) awarding Plaintiff such other and further relief as may be just and proper.

This motion is made pursuant to Fed. R. Civ. P. 56 and Civil L.R. 7-2 on the grounds that

1 there no material issues of fact in dispute concerning Defendant's liability, therefore, Movant is  
2 entitled to summary judgment as a matter of law.

3 This motion is based on this Notice, the Motion for Partial Summary Judgment Against  
4 Defendant, Hunt & Henriques, the Memorandum of Points and Authorities in Support of Motion for  
5 Partial Summary Judgment Against Defendant, Hunt & Henriques, the Declaration of Jo Anne Graff  
6 in Support of Motion for Partial Summary Judgment Against Defendant, Hunt & Henriques, and  
7 such other evidence, argument, and authorities which may be presented at or prior to the hearing  
8 before this Court on this Motion, and such other and further matters of which this Court may take  
9 judicial notice.

10 Please govern yourself accordingly.

11  
12 CONSUMER LAW CENTER, INC.

13  
14 Dated: June 6, 2008

By: /s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.  
Attorney for Plaintiff  
JO ANNE GRAFF

Fred W. Schwinn (SBN 225575)  
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Attorney for Plaintiff  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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JO ANNE GRAFF,

Plaintiff,

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HUNT & HENRIQUES, a general partnership,  
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Case No. C08-00908-JF-PVT

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AGAINST DEFENDANT,  
HUNT & HENRIQUES**

Date: August 15, 2008  
Time: 9:00 a.m.  
Judge: Honorable Jeremy Fogel  
Courtroom: Courtroom 3, 5th Floor  
Place: 280 South First Street  
San Jose, California

COMES NOW the Plaintiff, JO ANNE GRAFF, by and through her attorney Fred W. Schwinn of the Consumer Law Center, Inc., and hereby submits her Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment filed herein.

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## I. INTRODUCTION

This case was brought by JO ANNE GRAFF (hereinafter “Plaintiff”) against a debt collection law firm, HUNT & HENRIQUES, (hereinafter “H&H”) and two of its partner attorneys, MICHAEL SCOTT HUNT, (hereinafter “HUNT”) and JANALIE ANN HENRIQUES (hereinafter “HENRIQUES”), (hereinafter collectively referred to as “Defendants”). Plaintiff alleges various violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices. Plaintiff seeks statutory damages, attorney fees and costs under the FDCPA.

This case arises out of communications sent from Defendants to Plaintiff in an attempt to collect a consumer debt. The debt being collected was used for personal, family or household purposes. In her complaint, Plaintiff alleges, among other claims, that Defendants continued to communicate directly with Plaintiff in an attempt to collect the debt after they knew that Plaintiff was represented by an attorney with respect to the debt being collected. Plaintiff hereby moves for partial summary judgment on this claim for violation of 15 U.S.C. § 1692c(a)(2).

## II. PROCEDURAL HISTORY

On February 12, 2008, Plaintiff filed a Complaint in this action against Defendants.<sup>1</sup> Thereafter, Defendants filed their Answer on April 5, 2008.<sup>2</sup> On June 5, 2008, Plaintiff’s Motion for Partial Summary Judgment was filed herein. This Memorandum of Points and Authorities is submitted in support thereof.

## III. FACTS OF THE CASE

Plaintiff, JO ANNE GRAFF, is a “consumer” within the meaning of 15 U.S.C. § 1692a(3).<sup>3</sup> Defendant, HUNT & HENRIQUES, is a general partnership engaged in the business of collecting

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 4.

<sup>3</sup> Complaint (Doc. 1) ¶¶ 7 and 47; Declaration of Jo Anne Graff in Support of Motion for Summary Judgment (hereinafter “Graff Declaration”) ¶¶ 3 and 4.

1 consumer debts.<sup>4</sup>

2 On a date or dates unknown to Plaintiff, Plaintiff incurred a financial obligation for personal,  
3 family or household purposes, namely a consumer credit card account issued by CitiBank (South  
4 Dakota), N.A., which is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5).<sup>5</sup>  
5 Sometime thereafter, the debt was sold, assigned or otherwise transferred to Defendants for  
6 collection from Plaintiff.<sup>6</sup>

7 Thereafter, Defendants sent a collection letter to Plaintiff which was dated February 12,  
8 2007.<sup>7</sup> This was Defendants’ first written notice initially addressed to Plaintiff in connection with  
9 collecting the debt owed to CitiBank (South Dakota), N.A.<sup>8</sup>

10 On or about February 19, 2007, Plaintiff’s counsel, Fred W. Schwinn of the Consumer Law  
11 Center, Inc., sent a letter to Defendants via facsimile which stated in relevant part:

12 Please be advised that the consumer debtor in the matter referenced above has  
13 retained the services of the Consumer Law Center, Inc., to assist in the matter of debt  
14 relief. The purpose of this letter is two-fold. First, I wish to provide you with  
15 written notice in your capacity as a creditor, collection agent, or collection attorney  
16 that this consumer debtor, now our client, is in fact and in law **REPRESENTED BY**  
17 **AN ATTORNEY**. As a result of this notice, and pursuant to Section 1692(b)(6) of  
18 Title 15 of the United State Code and Section 1788.14(c) of the California Civil  
19 Code, you are to immediately terminate any further direct or indirect contacts with  
20 our client. Please note that such prohibited contacts include, but are not limited to,  
21 all forms of communication by letter, phone, fax, email or any other means. This  
22 also includes any contact directly or indirectly with any employer, family member,  
23 friend, or other creditor of our client.<sup>9</sup>

19 Thereafter on March 26, 2007, Defendant, HUNT, sent a collection letter to Fred W.

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21 <sup>4</sup> Complaint (Doc. 1) ¶¶ 8 and 48; Answer (Doc. 4) ¶¶ 8 and 48.

22 <sup>5</sup> Graff Declaration ¶ 4.

23 <sup>6</sup> Complaint (Doc. 1) ¶ 13; Answer (Doc. 4) ¶ 13; Graff Declaration ¶ 5.

24 <sup>7</sup> Complaint (Doc. 1) ¶ 14; Answer (Doc. 4) ¶ 14; Graff Declaration ¶ 6.

25 <sup>8</sup> Complaint (Doc. 1) ¶ 16; Answer (Doc. 4) ¶ 16; Graff Declaration ¶ 7.

26 <sup>9</sup> Complaint (Doc. 1) ¶ 24; Answer (Doc. 4) ¶ 24; Graff Declaration ¶¶ 8, 9 and 10;  
27 Declaration of Fred W. Schwinn in Support of Motion for Summary Judgment (hereinafter  
28 “Schwinn Declaration”) ¶ 3.

Schwinn which acknowledged Plaintiff's Counsel's representation of Plaintiff with regard to the debt owed to CitiBank (South Dakota), N.A.<sup>10</sup> However, despite the fact that Defendants acknowledged Plaintiff's counsel, they continued to communicate directly with Plaintiff in an attempt to collect the debt. On or about July 13, 2007, Defendants sent a collection letter directly to Plaintiff in an attempt to collect the debt owed to CitiBank (South Dakota), N.A.<sup>11</sup>

#### IV. STANDARD OF REVIEW

The standard of review for a motion for summary judgment is that the moving party is entitled to summary judgment when the evidence shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.<sup>12</sup> The Court must determine "whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party."<sup>13</sup> "Only disputes over facts that might affect the outcome of the suit under governing law will . . . preclude summary judgment."<sup>14</sup> When the record taken as a whole would not persuade a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.<sup>15</sup> In some cases, the evidence of the opposing party is so weak as to "fail[] to raise a material issue of fact."<sup>16</sup>

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<sup>10</sup> Complaint (Doc. 1) ¶¶ 28, 30 and 31; Answer (Doc. 4) ¶¶ 28, 30 and 31; Graff Declaration ¶¶ 12 and 13; Schwinn Declaration ¶ 4.

<sup>11</sup> Complaint (Doc. 1) ¶¶ 36 and 40; Answer (Doc. 4) ¶¶ 36 and 40; Graff Declaration ¶¶ 14 and 15..

<sup>12</sup> Fed. R. Civ. P. 56(c); *Stockton Wire Products, Inc. v. K-Lath Corp.*, 440 F.2d 782 (9<sup>th</sup> Cir. 1971).

<sup>13</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2510, 91 L. Ed. 2d 202, 212 (1986).

<sup>14</sup> *Id.* at 248.

<sup>15</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

<sup>16</sup> *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 906 (9<sup>th</sup> Cir. 1994).

1 The movant must carry this burden of “identifying those parts of the record that indicate the  
 2 absence of a genuine issue of material fact.”<sup>17</sup> Once this burden is met, the non-movant is required  
 3 to “come forward with specific facts showing that there is a genuine issue for trial” as to elements  
 4 essential to the non-movant’s claim.<sup>18</sup> The non-movant must show more than “some metaphysical  
 5 doubt as to the material facts;”<sup>19</sup> he or she must “set forth specific facts showing that there is a  
 6 genuine issue for trial.”<sup>20</sup>

7 The Court must resolve all disputed facts and weigh all evidence “in the light most favorable  
 8 to the nonmoving party.”<sup>21</sup> However, the nonmoving party may not rely upon mere allegations or  
 9 denials contained in its pleadings or briefs, but must come forward with specific facts showing the  
 10 presence of a genuine issue for trial.<sup>22</sup> As noted above, the requirement that a “genuine” issue of fact  
 11 must be present has been interpreted to mean that the evidence is such that a reasonable trier of fact  
 12 could return a verdict for the nonmoving party.<sup>23</sup> Summary judgment is more than a “disfavored  
 13 procedural shortcut,” it is an important procedure “designed to ‘secure the just, speedy and  
 14 inexpensive determination of every action.’ Fed. R. Civ. P. 1.”<sup>24</sup> One of the principal purposes of  
 15 the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and  
 16 the rule should be interpreted in a way that allows it to accomplish this purpose.<sup>25</sup>

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 18 <sup>17</sup> *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1048 (9<sup>th</sup> Cir. 1995).

19 <sup>18</sup> *Schneider v. TRW, Inc.*, 938 F.3d 986, 991 (9<sup>th</sup> Cir. 1990).

20 <sup>19</sup> *Matsushita Elec. Indus. Co.*, 475 U.S. at 586

21 <sup>20</sup> Fed. R. Civ. P. 56(e).

22 <sup>21</sup> *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass’n*, 809 F.2d 626, 630-31  
 23 (9<sup>th</sup> Cir. 1987).

24 <sup>22</sup> *Rieber v. Kovelman (In re Kovelman)*, 1995 U.S. App. LEXIS 8487 at \*2 (9<sup>th</sup> Cir. April  
 25 6, 1995).

26 <sup>23</sup> *Anderson*, 477 U.S. at 248

27 <sup>24</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

28 <sup>25</sup> *Id.*, at 323-324.

## V. SUMMARY OF ARGUMENT

- A. The “Least Sophisticated Consumer” Standard Is Used to Analyze Violations of the FDCPA.
- B. Under the Strict Liability Standard of the FDCPA, Plaintiff Has Pled Numerous Violations of the Act, as Seen from the Perspective of the “Least Sophisticated Consumer.”
- C. Defendant, H&H, Continued to Communicate Directly with Plaintiff in an Attempt to Collect the Debt Despite Knowing That Plaintiff Was Represented by an Attorney, in Violation of 15 U.S.C. § 1692c(a)(2).
- D. This Court Should Award Plaintiff the Maximum Statutory Damage Amount of \$1,000 Under the FDCPA.
- E. Plaintiff Has a Statutory Right to Attorney’s Fees and Costs.

## VI. STATEMENT OF QUESTIONS PRESENTED

Have Defendants violated the Fair Debt Collection Practices Act? If so, what is the amount of statutory damages that should be awarded to Plaintiff?

## VII. ARGUMENT

### A. THE “LEAST SOPHISTICATED CONSUMER” STANDARD IS USED TO ANALYZE VIOLATIONS OF THE FDCPA

The FDCPA states that its purpose, in part, is “to eliminate abusive debt collection practices by debt collectors.”<sup>26</sup> The statute is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt.<sup>27</sup> The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt.<sup>28</sup> The FDCPA also requires the debt collector to provide the consumer with a notice of his or her validation rights.<sup>29</sup>

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<sup>26</sup> 15 U.S.C. § 1692(e).

<sup>27</sup> *Baker v. G.C. Services*, 677 F.2d 775, 777 (9<sup>th</sup> Cir. 1982).

<sup>28</sup> 15 U.S.C. §§ 1692d, 1692e, and 1692f.

<sup>29</sup> 15 U.S.C. § 1692g.

1 The United States Court of Appeals for the Ninth Circuit has held that whether a  
 2 communication or other conduct violates the FDCPA is to be determined by analyzing it from the  
 3 perspective of the “least sophisticated consumer.”<sup>30</sup> The “least sophisticated consumer” standard  
 4 is objective—not subjective.<sup>31</sup> Courts determine whether the “least sophisticated consumer” would  
 5 be misled or deceived by the statements made in a collection letter as a matter of law.<sup>32</sup>

6 “The basic purpose of the least sophisticated consumer standard is to ensure that the FDCPA  
 7 protects all consumers, the gullible as well as the shrewd.”<sup>33</sup> “While protecting naive consumers,  
 8 the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices  
 9 by preserving a quotient of reasonableness and presuming a basic level of understanding and  
 10 willingness to read with care.”<sup>34</sup>

11 “As the FDCPA is a strict liability statute, proof of one violation is sufficient to support  
 12 summary judgment for the plaintiff.”<sup>35</sup> “Because the Act imposes strict liability, a consumer need  
 13 not show intentional conduct by the debt collector to be entitled to damages.”<sup>36</sup> Furthermore, the

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15 <sup>30</sup> *Swanson v. Southern Oregon Credit Serv.*, 869 F.2d 1222, 1225 (9<sup>th</sup> Cir. 1988); *Wade v.*  
 16 *Regional Credit Ass’n*, 87 F.3d 1098, 1100 (9<sup>th</sup> Cir. 1996).

17 <sup>31</sup> *Swanson*, 869 F.2d at 1227.

18 <sup>32</sup> *Wade*, 87 F.3d at 1100; *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9<sup>th</sup> Cir. 1977); *Swanson*,  
 19 896 F.2d at 1225-26.

20 <sup>33</sup> *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2<sup>nd</sup> Cir. 1993).

21 <sup>34</sup> *United States v. National Financial Services*, 98 F.3d 131, 136 (4<sup>th</sup> Cir. 1996) (citations  
 22 omitted); *see also Russell v. Equifax A.R.S.*, 74 F.3d 30 (2<sup>nd</sup> Cir. 1996); *Bentley v. Great Lakes*  
 23 *Collection Bureau*, 6 F.3d 60 (2<sup>nd</sup> Cir. 1993); *Jeter v. Credit Bureau*, 760 F.2d 1168 (11<sup>th</sup> Cir. 1985);  
*Graziano v. Harrison*, 950 F.2d 107, 111 (3<sup>rd</sup> Cir. 1991); *Avila v. Rubin*, 84 F.3d 222, 226-27 (7<sup>th</sup>  
 24 Cir. 1996) (“the standard is low, close to the bottom of the sophistication meter”).

25 <sup>35</sup> *Cacace v. Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1990); *see also Stojanovski v. Strobl*  
 26 *& Manoogian, P.C.*, 783 F. Supp. 319, 323 (E.D. Mich. 1992); *Riveria v. MAB Collections*, 682 F.  
 27 Supp. 174, 178-9 (W.D.N.Y. 1988).

28 <sup>36</sup> *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2<sup>nd</sup> Cir. 1996); *see also Taylor v. Perrin Landry,*  
*deLaunay & Durand*, 103 F.3d 1232, 1236 (5<sup>th</sup> Cir. 1997); *Bentley*, 6 F.3d at 62; *Clomon*, 988 F.2d  
 at 1318.

1 question of whether the consumer owes the alleged debt has no bearing on a suit brought pursuant  
2 to the FDCPA.<sup>37</sup>

3 It is important to note that by protecting consumers from abusive, deceptive and unfair  
4 collection practices, the FDCPA insures that those debt collectors who refrain from using abusive  
5 debt collection practices are not competitively disadvantaged.<sup>38</sup> Moreover, the FDCPA further  
6 insures that regardless of whether a consumer owes a debt, he or she will be treated in a reasonable  
7 and civil manner.<sup>39</sup>

8 Accordingly, Plaintiff asserts that whether or not Defendants violated the FDCPA must be  
9 evaluated from the standpoint of the “least sophisticated consumer.”

10 **B. UNDER THE STRICT LIABILITY STANDARD OF THE FDCPA, PLAINTIFF HAS**  
11 **PLED NUMEROUS VIOLATIONS OF THE ACT, AS SEEN FROM THE**  
12 **PERSPECTIVE OF THE “LEAST SOPHISTICATED CONSUMER”**

13 To establish a violation of the FDCPA, one need only show that: (1) Plaintiff is a consumer,  
14 (2) Plaintiff has been the object of collection activity arising from a consumer debt, (3) Defendant  
15 collecting the “debt” is a “debt collector” as defined in the FDCPA, and (4) Defendant has engaged  
16 in any act or omission in violation of the prohibitions or requirements of the FDCPA.<sup>40</sup> Plaintiff has  
17 pleaded and Defendants have admitted that Defendant, H&H, is a debt collector. Further, Plaintiff  
18 is able to show that she is a consumer and the debt which Defendants were attempting to collect is  
19 a consumer debt. The remainder of this memorandum will show that the last element is also  
20 satisfied as a matter of law.

21 Because the FDCPA is a strict liability statute, proof of one violation is sufficient to defeat  
22

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23 <sup>37</sup> *McCartney v. First City Bank*, 970 F.2d 45 (5<sup>th</sup> Cir. 1992); *Baker*, 677 F.2d at 777.

24 <sup>38</sup> 15 U.S.C. § 1692(e).

25 <sup>39</sup> *Baker*, 677 F.2d at 777.

26 <sup>40</sup> *Turner v. Cook*, 362 F.3d 1219, 1227-1228 (9<sup>th</sup> Cir. 2004); *Romine v. Diversified*  
27 *Collection Servs.*, 155 F.3d 1142, 1145 (9<sup>th</sup> Cir. 1998); *De Coito v. Unifund Corp.*, 2004 U.S. Dist.  
28 LEXIS 23729 at \*8 (D. Haw. January 4, 2004); *United States v. Trans Continental Affiliates*, 1997  
U.S. Dist. LEXIS 388 at \*8 (N.D. Cal. January 8, 1997).



a motion to dismiss and support summary judgment for a Plaintiff.<sup>41</sup> In light of this strict liability standard, a consumer need not show intentional conduct by the debt collector in order to be entitled to damages,<sup>42</sup> and there are no unimportant violations.<sup>43</sup> Further, no proof of deception or actual damages is required to obtain statutory remedies.<sup>44</sup>

**1. DEFENDANT, H&H, CONTINUED TO COMMUNICATE DIRECTLY WITH PLAINTIFF IN AN ATTEMPT TO COLLECT THE DEBT DESPITE KNOWING THAT PLAINTIFF WAS REPRESENTED BY AN ATTORNEY, IN VIOLATION OF 15 U.S.C. § 1692c(a)(2).**

15 U.S.C. § 1692c(a)(2) provides:

(a) Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt--

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer . . .

As described above, Defendant, H&H, communicated directly with Plaintiff by sending her a collection dunning letter after acknowledging that Plaintiff was represented by an attorney with respect to the debt being collected. H&H had "knowledge of" and was able to "readily ascertain" Plaintiff's counsel's address, as evidenced by the communication sent to Plaintiff's counsel by Defendants on March 26, 2007. Further, Plaintiff's counsel did not fail to respond to any

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<sup>41</sup> See *Hartman v. Meridian Financial Services, Inc.*, 191 F. Supp. 2d 1031, 1046-47 (W.D. Wis. 2002) ("One false or misleading statement in a collection letter renders the entire communication false or misleading and constitutes one violation"); See also *Cacace*, 775 F. Supp. at 505; *Traverso v. Sharinn*, 1989 U.S. Dist. LEXIS 19100, \*4 (D. Conn. Sept. 15, 1989); *Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8<sup>th</sup> Cir. 2001); *Bentley*, 6 F.3d at 62.

<sup>42</sup> See *Pittman v. J.J. Mac Intyre Co. of Nevada, Inc.*, 969 F. Supp. 609, 613 (D. Nev. 1997). See also *Russell*, 74 F.3d at 36 ("Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.").

<sup>43</sup> *Bentley*, 6 F.3d at 63 (no non-actionable violations of FDCPA); *Taylor*, 103 F.3d at 1234 (failure "to comply with any provision of the FDCPA" leads to liability).

<sup>44</sup> *Baker*, 677 F.2d at 780.



1 communication from H&H and Plaintiff's counsel did not consent to Defendants' direct  
 2 communication with Plaintiff.<sup>45</sup> Therefore, Defendant, H&H, has violated the Fair Debt Collection  
 3 Practices Act, 15 U.S.C. § 1692c(a)(2).<sup>46</sup> As such, Plaintiff is entitled to summary judgment on this  
 4 issue.

5 **C. THIS COURT SHOULD AWARD PLAINTIFF THE MAXIMUM STATUTORY**  
 6 **DAMAGE AMOUNT OF \$1,000 UNDER THE FDCPA**

7 The maximum statutory damage award available under the Federal FDCPA is a modest  
 8 \$1,000. Courts have therefore awarded the maximum amount even when the violations found were  
 9 less numerous and egregious than those herein. For example, in *Riviera v. M.A.B.*,<sup>47</sup> the court  
 10 awarded the maximum \$1,000 because the validation notice appeared on the back of the letter, in  
 11 relatively small print, with no reference to it on the front of the letter. Thus, even though the notice  
 12 was accurate, the court determined a \$1,000 award was appropriate. Furthermore, in *Tolentino v.*  
 13 *Friedman*,<sup>48</sup> the Seventh Circuit upheld the maximum statutory award of \$1,000 despite finding that  
 14 only one provision of the FDCPA had been proven. In that case the debt collector had included a  
 15 disclosure required 15 U.S.C. § 1692e(11) in its initial notice, but had failed to include it in a  
 16 subsequent notice. The present case involves a more egregious violation of the FDCPA than either  
 17 of these cases, as it involves direct attorney contact with a consumer known to be represented by  
 18 counsel. Thus, the violation herein is more meaningful than in those cases, and therefore the Court  
 19 should award the maximum amount of statutory damages under 15 U.S.C. § 1692k(a)(2)(A), which  
 20 is \$1,000.

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21 <sup>45</sup> Schwinn Declaration ¶¶ 5, 6 and 7.

22 <sup>46</sup> *Herbert v. Monterey Financial Services*, 863 F. Supp. 76, 79 (D. Conn. 1994) (Debt  
 23 collector defendant violated 15 U.S.C. 1692c(a)(2) by sending a collection letter to the consumer-  
 24 plaintiff 5 days after receiving learning the consumer was represented by an attorney.); *Goins v.*  
 25 *JBC & Associates, P.C.*, 352 F. Supp. 2d 262 (D. Conn. 2005) (Debt collector defendant violated  
 26 15 U.S.C. § 1692c(a)(2) by contacting consumer plaintiff regarding a debt despite having knowledge  
 that plaintiff was represented with regard to the debt).

27 <sup>47</sup> 682 F. Supp. 174 (W.D.N.Y. 1988).

28 <sup>48</sup> 46 F.3d 645 (7<sup>th</sup> Cir. 1995).

**D. PLAINTIFF HAS A STATUTORY RIGHT TO ATTORNEY'S FEES AND COSTS.**

The federal FDCPA directs the Court to award attorney's fees to a prevailing consumer. 15 U.S.C. § 1692k(a)(3). A number of cases decided under 15 U.S.C. § 1692k have held that an award of attorney's fees and costs is required if the plaintiff prevails.<sup>49</sup> The Court should award the Plaintiff her reasonable attorney's fees and costs incurred in this matter.

**VIII. CONCLUSION**

For the reasons set forth above, Plaintiff, as a matter of law, is entitled to partial summary judgment: 1) declaring that Defendant H&H's collection activities violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(a)(2); 2) awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); 3) awarding Plaintiff the costs of this action and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3); and 4) awarding Plaintiff such other and further relief as may be just and proper.

This Motion for Partial Summary Judgment only addresses Plaintiff's claim for violation of 15 U.S.C. § 1692c(a)(2). Plaintiff hereby reserves all other claims made in this case.

CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn  
 Fred W. Schwinn, Esq.  
 Attorney for Plaintiff  
 JO ANNE GRAFF

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<sup>49</sup> See, e.g. *Zagorski v. Midwest Billing Services, Inc.*, 178 F.3d 116 (7<sup>th</sup> Cir. 1997) (holding it was an abuse of discretion not to award attorney's fees following a stipulated judgment in the amount of \$100; and directing the court to award fees sufficient to compensate the attorney for the time spent on the case in order to encourage enforcement of the FDCPA); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22 (2d Cir. 1989) (directing trial court to award fees on remand despite the lack of actual or statutory damages because Plaintiff had demonstrated that Defendant violated the FDCPA); *Perez v. Perkiss*, 742 F. Supp. 883 (D. Del. 1990) (awarding Plaintiffs' legal services attorneys \$10,110 after a half-day jury trial in which Plaintiff was awarded \$1,200 in damages).

Fred W. Schwinn (SBN 225575)  
CONSUMER LAW CENTER, INC.  
12 South First Street, Suite 1014  
San Jose, California 95113-2418  
Telephone Number: (408) 294-6100  
Facsimile Number: (408) 294-6190  
Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff  
JO ANNE GRAFF

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JO ANNE GRAFF,

Plaintiff,

v.

HUNT & HENRIQUES, a general partnership,  
MICHAEL SCOTT HUNT, individually and in  
his official capacity, and JANALIE ANN  
HENRIQUES, individually and in her official  
capacity,

Defendant.

Case No. C08-00908-JF-PVT

**DECLARATION OF JO ANNE  
GRAFF IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

[Fed. R. Civ. P. 56 ]

Date: August 15, 2008  
Time: 9:00 a.m.  
Judge: Honorable Jeremy Fogel  
Courtroom: Courtroom 3, 5th Floor  
Place: 280 South First Street  
San Jose, California

I, Jo Anne Graff, declare under penalty of perjury, under the laws of the United States, 28  
U.S.C. § 1746, that the following statements are true:

1. I am the Plaintiff in the above captioned case.
2. I have personal knowledge of the following facts, and if called as a witness,  
I could and would competently testify thereto.
3. I am a natural person residing in Santa Clara County, California.
4. On a date unknown to me, I incurred a financial obligation for personal,  
family or household use, namely a consumer credit card account issued by CitiBank (South Dakota),  
N.A., bearing the account number XXXX-XXXX-XXXX-9621 (hereinafter "the debt").
5. Sometime thereafter, on a date unknown to me, the debt was consigned,

1 placed or otherwise transferred to Defendants for collection.

2 6. Thereafter, Defendants sent a collection letter dated February 12, 2007  
3 (Exhibit "1") to me. A true and accurate copy of the collection letter dated February 12, 2007, from  
4 Defendants is attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

5 7. The collection letter dated February 12, 2007 (Exhibit "1") was Defendants'  
6 first written notice that I received from Defendants in connection with collection the debt owed to  
7 CitiBank (South Dakota), N.A.

8 8. On or about February 19, 2007, my attorney, Fred W. Schwinn of the  
9 Consumer Law Center, Inc., sent a letter to Defendants via facsimile which stated in relevant part:

10 Please be advised that the consumer debtor in the matter referenced above has  
11 retained the services of the Consumer Law Center, Inc., to assist in the matter of debt  
12 relief. The purpose of this letter is two-fold. First, I wish to provide you with  
13 written notice in your capacity as a creditor, collection agent, or collection attorney  
14 that this consumer debtor, now our client, is in fact and in law **REPRESENTED BY**  
15 **AN ATTORNEY**. As a result of this notice, and pursuant to Section 1692(b)(6) of  
16 Title 15 of the United States Code and Section 1788.14(c) of the California Civil  
Code, you are to immediately terminate any further direct or indirect contacts with  
our client. Please note that such prohibited contacts include, but are not limited to,  
all forms of communication by letter, phone, fax, email or any other means. This  
also includes any contact directly or indirectly with any employer, family member,  
friend, or other creditor of our client.

17 9. A true and accurate copy of my attorney's February 19, 2007, representation  
18 letter is attached hereto, marked Exhibit "2," and by this reference is incorporated herein.

19 10. A Memory Transmission Report attached as the last page of Exhibit "2"  
20 verifies that the 4 page document was transmitted to facsimile machine 362-2229 on February 19,  
21 2007, and that said transmission was completed and that all pages were received and that the  
22 Memory Transmission Report was generated which confirmed said transmission and receipt.

23 11. Defendants had actual knowledge that I was represented by an attorney with  
24 regard to the debt owed to Citibank (South Dakota), N.A., on February 19, 2007.

25 12. On or about March 26, 2007, Defendants sent a collection letter to my  
26 attorney, Fred W. Schwinn, which acknowledged my counsel's representation with regard to the  
27 debt owed to Citibank (South Dakota), N.A.

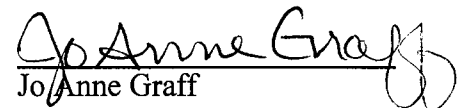
28 13. A true and accurate copy of the collection letter, without attachments, from

1 Defendants to my attorney is attached hereto, marked Exhibit "3," and by this reference is  
2 incorporated herein.

3 14. After receiving my attorney's letter notifying Defendants that I was  
4 represented by an attorney (Exhibit "2"), Defendants continued to communicate directly with me  
5 in an attempt to collect the debt.

6 15. Thereafter, Defendants sent a collection letter dated July 13, 2007 (Exhibit  
7 "4"), directly to me. A true and accurate copy of the July 13, 2007, collection letter from  
8 Defendants to me is attached hereto, marked Exhibit "4," and by this reference is incorporated  
9 herein.

10 Executed at San Jose, California on June 3, 2008.

11  
12   
13 Jo Anne Graff

HUNT & HENRIQUES

ATTORNEYS AT LAW

151 BERNAL ROAD, SUITE 8

SAN JOSE, CALIFORNIA 95119-1306

AREA CODE 408

TELEPHONE 362 - 2270

FACSIMILE 362 - 2299

MICHAEL S. HUNT  
JANALIE HENRIQUES

JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

February 12, 2007

RE: CITIBANK (SOUTH DAKOTA) N.A. Account Number: 5466160018089621  
Balance as of February 12, 2007: \$6,031.79

Dear JO A GRAFF:

Our client, CITIBANK (SOUTH DAKOTA) N.A., has engaged this law firm to make demand for payment in full on your account referenced above. Your account is in default and has been closed, and formal demand is now being made for the entire outstanding balance. As of the date of this letter, your total debt is \$6,031.79. This amount may increase because of interest.

If you want to resolve this matter without a lawsuit, you must pay the outstanding balance stated above to satisfy your account.

Our client considers this to be a serious matter. A legal proceeding is a matter of public record. If a lawsuit is filed, the local court could enter a judgment against you for the entire balance of your account plus, to the extent provided in your account agreement and permitted by law, attorney's fees, court costs and interest. If a judgment is entered against you, it may appear on your credit record for up to seven (7) years and may affect your ability to obtain credit, employment and/or housing.

Federal law gives you 30 days after you receive this letter to dispute the validity of the debt or any part of it. If you do not dispute the validity of the debt, or any part of it, within that period, we will assume that the debt is valid. If you dispute the debt, or any part of it, in writing - by mailing a notice to this firm to that effect on or before the 30th day following the date you receive this letter - we will obtain and mail to you proof (verification) of the debt. And if, within the same period, you request in writing the name and address of the original creditor (if different from our client), we will furnish you with that information too. Upon receipt of your written dispute, all efforts to collect this debt will be suspended until we mail any required information to you. Our client will wait until sufficient time has elapsed for this firm to be able to receive a written notice of dispute from you - even if you mail it on the 30th day following the date you receive this letter - before authorizing us to file suit against you to collect this debt.

***Additional important disclosures continued on reverse...***



JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

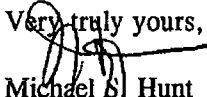
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**The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP (1-877-382-4357) or [www.ftc.gov](http://www.ftc.gov).**

This communication is from a debt collector. This letter is an attempt to collect a debt and any information obtained will be used for that purpose.

You may contact us toll free at 1-800-680-2426.

Very truly yours,

  
Michael S. Hunt  
Janalie Henriques  
HUNT & HENRIQUES

---

X0700502

HUNT & HENRIQUES  
ATTORNEYS AT LAW  
151 Bernal Road, Suite 8  
San Jose, California 95119-1306

ADDRESS SERVICE REQUESTED

JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

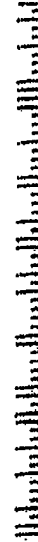


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**Consumer Law Center, Inc.**

12 South First Street, Suite 416

San Jose, CA 95113-2404

(408) 294-6100

Fax: (408) 294-6190

**FAX COVER SHEET**

FAX NUMBER TRANSMITTED TO: 408-362-2299

To: Hunt & Henriques  
From: Fred W. Schwinn  
Client/Matter: Jo Anne Graff-5466-1600-1808-9621  
Date: February 19, 2007

DOCUMENTS	NUMBER OF PAGES*
Letter	2

**COMMENTS:**

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CONSUMER LAW CENTER, INC.

12 South First Street, Suite 416  
San Jose, CA 95113-2404

Fred W. Schwinn  
fred.schwinn@sjconsumerlaw.com

(408) 294-6100  
Fax (408) 294-6190

Via Fax to: 408-362-2299

February 19, 2007

Hunt & Henriques  
161 Bernal Road, Suite 8  
San Jose, CA 95119-1306

In the Matter of: Jo Anne Graff  
210 El Carmelo Avenue  
Palo Alto, CA 94306-2377

Your Account or File No(s): 5466-1600-1808-9621

Dear Sir or Madam:

I have attached a copy of your most recent correspondence for your reference. Please be advised that the consumer debtor in the matter referenced above has retained the services of the Consumer Law Center, Inc., to assist in the matter of debt relief. The purpose of this letter is two-fold. First, I wish to provide you with written notice in your capacity as a creditor, collection agent, or collection attorney that this consumer debtor, now our client, is in fact and in law REPRESENTED BY AN ATTORNEY. As a result of this notice, and pursuant to Sections 1692b(6) and 1692c(a)(2) of Title 15 of the United States Code and Section 1788.14(c) of the California Civil Code, you are to immediately terminate any further direct or indirect contacts with our client. Please note that such prohibited contacts include, but are not limited to, all forms of communication by letter, phone, fax, email or any other means. This also includes any contact directly or indirectly with any employer, family member, friend, or other creditor of our client.

Second, this letter is intended to dissuade your firm from filing a lawsuit against our client and reducing the amount that is allegedly owed to a judgment. Should you choose to file a lawsuit against our client in this matter, please be advised that I have reviewed with our client the list of California exemptions provided by the Judicial Counsel of California and I have determined that our client owns no property that could be subject to attachment or levy. Furthermore, our client is disabled and unemployed. Our client is therefore "judgement proof." Should you decide to reduce the amount allegedly owed to a judgment, it will remain uncollectible.

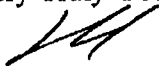
Upon receipt of this letter, any future direct or indirect contacts with our client will result in our office filing a claim against you under the Federal Fair Debt Collection Act, the California Civil Code, and any other available and applicable state or federal laws. If it becomes necessary to file any and all such claims, then please be advised and take due notice that our client will be seeking actual damages, statutory damages, court costs, and our reasonable attorney fees based on our hourly

rate of \$ 300.00. You are also hereby placed on notice that if unlawful and illegal conduct persists or is egregious, then our client will also seek an award of punitive damages as may be determined at the discretion of the Court.

Based on the foregoing, any further communications concerning our client and/or the subject debt must be directed to the Consumer Law Center, Inc. Be advised that any request for information will be addressed in a reasonable time period.

Until advised otherwise, you should mark this matter as "disputed." I anticipate your cooperation herein.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'FWS' or similar, written over a horizontal line.

Fred W. Schwinn, Esq.

MEMORY TRANSMISSION REPORT

TIME : 02-19-'07 12:31  
FAX NO.1 : 408-294-6190  
NAME : Consumer Law Center

FILE NO. : 103  
DATE : 02.19 12:26  
TO : 83622299  
DOCUMENT PAGES : 5  
START TIME : 02.19 12:27  
END TIME : 02.19 12:31  
PAGES SENT : 5  
STATUS : OK

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DOCUMENTS: 1 letter  
FAX NUMBER TRANSMITTED TO: 408-362-2299  
To: Hunt & LeDucques  
From: Fred W. Schwinn  
Client/Matter: Jo Anne Christ-5466-1600-1808-9621  
Date: February 19, 2007  
NUMBER OF PAGES: 2

FAX COVER SHEET

Consumer Law Center, Inc.  
17 South First Street, Suite 416  
San Jose, CA 95113-2404  
(408) 294-6100  
Fax: (408) 294-6190

**HUNT & HENRIQUES**

MICHAEL S. HUNT  
JANALIE HENRIQUES

ATTORNEYS AT LAW  
151 BERNAL ROAD, SUITE 8  
SAN JOSE, CA 95119-1306

AREA CODE 408  
TELEPHONE 362-2270  
FACSIMILE 362-2299

March 26, 2007

Attn: Fred W. Schwinn, Esq.  
Consumer Law Center  
12 South First Street, Suite #416  
San Jose, CA 95113-2404

**RE: JO A GRAFF**  
**CITIBANK(SOUTH DAKOTA)N.A. ACCT NO: 5466160018089621**

Dear Mr. Schwinn:

Your recent correspondence has been forwarded to me for response.

Pursuant to your client's request, I am providing you with the following account documents:

1. Account statements from: 02/28/2006 to 01/31/2007

Please advise within ten days if you are authorized to accept service of process on behalf of Ms. Gresham. If we have not heard from you within ten days of the date of this letter, litigation will proceed and service will be attempted on your client directly.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND ALL INFORMATION  
OBTAINED WILL BE USED TO COLLECT THE DEBT.

Yours truly,



Michael S. Hunt  
HUNT & HENRIQUES



HUNT & HENRIQUES

ATTORNEYS AT LAW

151 BERNAL ROAD, SUITE 8

SAN JOSE, CALIFORNIA 95119-1306

AREA CODE 408

TELEPHONE 362-2270

FACSIMILE 362-2299

MICHAEL S. HUNT  
JANALIE HENRIQUES

July 13, 2007

JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

Re: CITIBANK (SOUTH DAKOTA) N.A. v.  
JO A GRAFF  
Case # 107CV084095  
Date of Judgment: July 9, 2007  
Amount of Judgment: \$6,251.79

Dear JO A GRAFF,

The court has entered judgment against you and in favor of our client in the amount of \$6,251.79. The judgment will remain valid for 10 years from the date it was entered and it can be renewed for an additional period of time. Judgments accrue interest at the rate of 10% per annum. The judgment is a public record and may be reported to the credit reporting companies and may be included on your credit report until the judgment expires.

We are in the process of recording an abstract of judgment which may create a lien on transactions involving real property such as your purchase, refinance or sale of real property. The abstract also remains valid for 10 years.

Now that judgment has been entered, our client has instructed us to attempt to collect the judgment. Wage garnishments and bank levies are legal remedies that we may attempt to use to collect the balance due under the judgment. If we use these remedies, additional costs will be incurred. We may request that the court add the costs to your judgment.

Our client is still willing to settle the debt. Please call us or email us to find out about settlement options. You can telephone us toll free at: 1 (800) 496-5048. Our email address is: Settlements@HuntHenriques.com. We look forward to hearing from you.

This firm is a debt collector and any information obtained may be used for the purpose of collecting the debt.

Very truly yours,

Michael S. Hunt  
Janalie Henriques  
HUNT & HENRIQUES  
Attorneys at Law  
X0700502



JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

HUNT & HENRIQUES  
ATTORNEYS AT LAW  
151 Bernal Road, Suite 8  
San Jose, California 95119-1306

ADDRESS SERVICE REQUESTED



SAN JOSE, CA 95119  
JUL 13 2007 00410 042722  
FP0593588 JMC01 02F65606

JO A GRAFF  
210 El Carmelo Ave  
Palo Alto, CA 94306-2377

9430652377 C053





Fred W. Schwinn (SBN 225575)  
CONSUMER LAW CENTER, INC.  
12 South First Street, Suite 1014  
San Jose, California 95113-2418  
Telephone Number: (408) 294-6100  
Facsimile Number: (408) 294-6190  
Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff  
JO ANNE GRAFF

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JO ANNE GRAFF,

Plaintiff,

v.

HUNT & HENRIQUES, a general partnership,  
MICHAEL SCOTT HUNT, individually and in  
his official capacity, and JANALIE ANN  
HENRIQUES, individually and in her official  
capacity,

Defendants.

Case No. C08-00908-JF-PVT

**DECLARATION OF FRED W.  
SCHWINN IN SUPPORT OF MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

[Fed. R. Civ. P. 56(e)]

Date: August 15, 2008  
Time: 9:00 a.m.  
Judge: Honorable Jeremy Fogel  
Courtroom: Courtroom 3, 5th Floor  
Place: 280 South First Street  
San Jose, California

I, Fred W. Schwinn, declare under penalty of perjury, under the laws of the United States,  
28 U.S.C. § 1746, that the following statements are true:

1. I am an attorney at law duly licensed to practice before all the courts of the  
State of California and am a shareholder in the law firm Consumer Law Center, Inc., attorneys of  
record for Plaintiff, JO ANNE GRAFF (hereinafter referred to as "Plaintiff").

2. I have personal knowledge of the following facts, and if called as a witness,  
I could and would competently testify thereto.

3. On February 19, 2007, I sent a letter to Defendants via facsimile transmission.  
A true and accurate copy of the letter and Memory Transmission Report are attached hereto, marked  
Exhibit "2," and by this reference is incorporated herein.



**Consumer Law Center, Inc.**

12 South First Street, Suite 416

San Jose, CA 95113-2404

(408) 294-6100

Fax: (408) 294-6190

**FAX COVER SHEET**

FAX NUMBER TRANSMITTED TO: 408-362-2299

To: Hunt & Henriques  
From: Fred W. Schwinn  
Client/Matter: Jo Anne Graff-5466-1600-1808-9621  
Date: February 19, 2007

DOCUMENTS	NUMBER OF PAGES*
Letter	2

**COMMENTS:**

Original will NOT follow.

*The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.*

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (408) 294-6100.



CONSUMER LAW CENTER, INC.

12 South First Street, Suite 416  
San Jose, CA 95113-2404

Fred W. Schwinn  
fred.schwinn@sjconsumerlaw.com

(408) 294-6100  
Fax (408) 294-6190

Via Fax to: 408-362-2299

February 19, 2007

Hunt & Henriques  
161 Bernal Road, Suite 8  
San Jose, CA 95119-1306

In the Matter of: Jo Anne Graff  
210 El Carmelo Avenue  
Palo Alto, CA 94306-2377

Your Account or File No(s): 5466-1600-1808-9621

Dear Sir or Madam:

I have attached a copy of your most recent correspondence for your reference. Please be advised that the consumer debtor in the matter referenced above has retained the services of the Consumer Law Center, Inc., to assist in the matter of debt relief. The purpose of this letter is two-fold. First, I wish to provide you with written notice in your capacity as a creditor, collection agent, or collection attorney that this consumer debtor, now our client, is in fact and in law REPRESENTED BY AN ATTORNEY. As a result of this notice, and pursuant to Sections 1692b(6) and 1692c(a)(2) of Title 15 of the United States Code and Section 1788.14(c) of the California Civil Code, you are to immediately terminate any further direct or indirect contacts with our client. Please note that such prohibited contacts include, but are not limited to, all forms of communication by letter, phone, fax, email or any other means. This also includes any contact directly or indirectly with any employer, family member, friend, or other creditor of our client.

Second, this letter is intended to dissuade your firm from filing a lawsuit against our client and reducing the amount that is allegedly owed to a judgment. Should you choose to file a lawsuit against our client in this matter, please be advised that I have reviewed with our client the list of California exemptions provided by the Judicial Counsel of California and I have determined that our client owns no property that could be subject to attachment or levy. Furthermore, our client is disabled and unemployed. Our client is therefore "judgement proof." Should you decide to reduce the amount allegedly owed to a judgment, it will remain uncollectible.

Upon receipt of this letter, any future direct or indirect contacts with our client will result in our office filing a claim against you under the Federal Fair Debt Collection Act, the California Civil Code, and any other available and applicable state or federal laws. If it becomes necessary to file any and all such claims, then please be advised and take due notice that our client will be seeking actual damages, statutory damages, court costs, and our reasonable attorney fees based on our hourly

rate of \$ 300.00. You are also hereby placed on notice that if unlawful and illegal conduct persists or is egregious, then our client will also seek an award of punitive damages as may be determined at the discretion of the Court.

Based on the foregoing, any further communications concerning our client and/or the subject debt must be directed to the Consumer Law Center, Inc. Be advised that any request for information will be addressed in a reasonable time period.

Until advised otherwise, you should mark this matter as "disputed." I anticipate your cooperation herein.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'F. Schwinn', written over the closing 'Very Truly Yours,'.

Fred W. Schwinn, Esq.

MEMORY TRANSMISSION REPORT

TIME : 02-19-'07 12:31  
FAX NO.1 : 408-294-6190  
NAME : Consumer Law Center

FILE NO. : 103  
DATE : 02.19 12:26  
TO : 83622299  
DOCUMENT PAGES : 5  
START TIME : 02.19 12:27  
END TIME : 02.19 12:31  
PAGES SENT : 5  
STATUS : OK

\*\*\* SUCCESSFUL TX NOTICE \*\*\*

The information contained in this facsimile message is information provided by attorney-client and/or the attorney-work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the addressee, we agree to deliver it in the manner requested by the sender. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (408) 294-6100.

Original will NOT follow.  
COMMENTS:

DOCUMENTS  
Letter  
To: Hunt & Leandrines  
From: Fred W. Schwinn  
Client/Matter: Jo Anne Chaff-5466-1600-1808-9621  
Date: February 19, 2007  
FAX NUMBER TRANSMITTED TO: 408-362-2299

FAX COVER SHEET

Consumer Law Center, Inc.  
12 South First Street, Suite 416  
San Jose, CA 95113-2404  
(408) 294-6100  
Fax: (408) 294-6190

NUMBER OF PAGES\*  
2

**HUNT & HENRIQUES**

MICHAEL S. HUNT  
JANALIE HENRIQUES

ATTORNEYS AT LAW  
151 BERNAL ROAD, SUITE 8  
SAN JOSE, CA 95119-1306

AREA CODE 408  
TELEPHONE 362-2270  
FACSIMILE 362-2299

March 26, 2007

Attn: Fred W. Schwinn, Esq.  
Consumer Law Center  
12 South First Street, Suite #416  
San Jose, CA 95113-2404

**RE: JO A GRAFF**  
**CITIBANK(SOUTH DAKOTA)N.A. ACCT NO: 5466160018089621**

Dear Mr. Schwinn:

Your recent correspondence has been forwarded to me for response.

Pursuant to your client's request, I am providing you with the following account documents:

1. Account statements from: 02/28/2006 to 01/31/2007

Please advise within ten days if you are authorized to accept service of process on behalf of Ms. Gresham. If we have not heard from you within ten days of the date of this letter, litigation will proceed and service will be attempted on your client directly.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND ALL INFORMATION  
OBTAINED WILL BE USED TO COLLECT THE DEBT.

Yours truly,



Michael S. Hunt  
HUNT & HENRIQUES

